

E AND R AMENDMENTS TO LB 397

Introduced by Larson, 40, Chairperson Enrollment and Review

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Section 48-801, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 48-801 As used in the Industrial Relations Act, unless
6 the context otherwise requires:

7 ~~(1) Person shall include an individual, partnership,~~
8 ~~limited liability company, association, corporation, business~~
9 ~~trust, or other organized group of persons;~~

10 ~~(2) Governmental service shall mean all services~~
11 ~~performed under employment by the State of Nebraska, any political~~
12 ~~or governmental subdivision thereof, any municipal corporation, or~~
13 ~~any public power district or public power and irrigation district;~~

14 ~~(3) Public utility shall include any individual,~~
15 ~~partnership, limited liability company, association, corporation,~~
16 ~~business trust, or other organized group of persons, any political~~
17 ~~or governmental subdivision of the State of Nebraska, any public~~
18 ~~corporation, or any public power district or public power and~~
19 ~~irrigation district, which carries on an intrastate business in~~
20 ~~this state and over which the government of the United States~~
21 ~~has not assumed exclusive regulation and control, that furnishes~~
22 ~~transportation for hire, telephone service, telegraph service,~~
23 ~~electric light, heat and power service, gas for heating or~~

1 illuminating, whether natural or artificial, or water service, or
2 any one or more thereof;

3 (4) Employer shall mean the State of Nebraska or any
4 political or governmental subdivision of the State of Nebraska
5 except the Nebraska National Guard or state militia. Employer shall
6 also mean any municipal corporation, any public power district or
7 public power and irrigation district, or any public utility;

8 (5) Employee shall include any person employed by any
9 employer;

10 (6) Labor organization shall mean any organization of any
11 kind or any agency or employee representation committee or plan, in
12 which employees participate and which exists for the purpose, in
13 whole or in part, of dealing with employers concerning grievances,
14 labor disputes, wages, rates of pay, hours of employment, or
15 conditions of work;

16 (7) Industrial dispute shall include any controversy
17 concerning terms, tenure, or conditions of employment, or
18 concerning the association or representation of persons in
19 negotiating, fixing, maintaining, changing, or seeking to arrange
20 terms or conditions of employment, or refusal to discuss terms or
21 conditions of employment;

22 (8) Commission shall mean the Commission of Industrial
23 Relations;

24 (9) Commissioner shall mean a member of the commission;
25 and

26 (10) Supervisor shall mean any employee having authority,
27 in the interest of the employer, to hire, transfer, suspend, lay

1 off, recall, promote, discharge, assign, reward, or discipline
2 other employees, or responsibly to direct them or to adjust
3 their grievances, or effectively to recommend such action, if in
4 connection with the foregoing the exercise of such authority is
5 not a merely routine or clerical nature, but requires the use of
6 independent judgment.

7 (1) Certificated employee has the same meaning as in
8 section 79-824;

9 (2) Commission means the Commission of Industrial
10 Relations;

11 (3) Commissioner means a member of the commission;

12 (4) Governmental service means all services performed
13 under employment by the State of Nebraska or any political or
14 governmental subdivision thereof, including public corporations,
15 municipalities, and public utilities;

16 (5) Industrial dispute includes any controversy between
17 public employers and public employees concerning terms, tenure,
18 or conditions of employment; the association or representation of
19 persons in negotiating, fixing, maintaining, changing, or seeking
20 to arrange terms or conditions of employment; or refusal to discuss
21 terms or conditions of employment;

22 (6) Labor organization means any organization of any
23 kind or any agency or employee representation committee or plan,
24 in which public employees participate and which exists for the
25 purpose, in whole or in part, of dealing with public employers
26 concerning grievances, labor disputes, wages, rates of pay, hours
27 of employment, or conditions of work;

1 (7) Metropolitan statistical area means a metropolitan
2 statistical area as defined by the United States Office of
3 Management and Budget;

4 (8) Municipality means any city or village in Nebraska;

5 (9) Noncertificated and noninstructional school employee
6 means a school employee who is not a certificated or instructional
7 employee;

8 (10) Private employer means an employer who is not a
9 public employer;

10 (11) Public employee includes any person employed by a
11 public employer;

12 (12) Public employer means the State of Nebraska or any
13 political or governmental subdivision of the State of Nebraska
14 except the Nebraska National Guard or state militia;

15 (13) Public utility includes any person or governmental
16 entity, including any public corporation, public power district,
17 or public power and irrigation district, which carries on an
18 intrastate business in this state and over which the government
19 of the United States has not assumed exclusive regulation and
20 control, that furnishes transportation for hire, telephone service,
21 telegraph service, electric light, heat, or power service, gas for
22 heating or illuminating, whether natural or artificial, or water
23 service, or any one or more thereof; and

24 (14) Supervisor means any public employee having
25 authority, in the interest of the public employer, to hire,
26 transfer, suspend, lay off, recall, promote, discharge, assign,
27 reward, or discipline other public employees, or responsibility

1 to direct them, to adjust their grievances, or effectively to
2 recommend such action, if in connection with such action the
3 exercise of such authority is not a merely routine or clerical
4 nature but requires the use of independent judgment.

5 Sec. 2. Section 48-801.01, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 48-801.01 Sections 48-801 to 48-838 and sections 11, 12,
8 13, and 16 of this act shall be known and may be cited as the
9 Industrial Relations Act.

10 Sec. 3. Section 48-802, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 48-802 To make operative the provisions of section 9,
13 Article XV, of the Constitution of Nebraska, the public policy of
14 the State of Nebraska is hereby declared to be as follows:

15 (1) The continuous, uninterrupted and proper functioning
16 and operation of the governmental service including governmental
17 service in a proprietary capacity and of public utilities engaged
18 in the business of furnishing transportation for hire, telephone
19 service, telegraph service, electric light, heat, or power service,
20 gas for heating or illuminating, whether natural or artificial,
21 or water service, or any one or more of them, to the people of
22 Nebraska are hereby declared to be essential to their welfare,
23 health, and safety. It is contrary to the public policy of
24 the state to permit any substantial impairment or suspension
25 of the operation of governmental service, including governmental
26 service in a proprietary capacity or any such utility by reason
27 of industrial disputes therein. It is the duty of the State

1 of Nebraska to exercise all available means and every power at
2 its command to prevent the same so as to protect its citizens
3 from any dangers, perils, calamities, or catastrophes which would
4 result therefrom. It is therefor further declared that governmental
5 service, including governmental service in a proprietary capacity,
6 and the service of such public utilities are clothed with a vital
7 public interest and to protect the same it is necessary that the
8 relations between the public employers and public employees in such
9 industries be regulated by the State of Nebraska to the extent and
10 in the manner ~~hereinafter~~ provided in the Industrial Relations Act;

11 (2) No right shall exist in any natural or corporate
12 person or group of persons to hinder, delay, limit, or suspend
13 the continuity or efficiency of any governmental service or
14 governmental service in a proprietary capacity of this state,
15 either by strike, lockout, or other means; and

16 (3) No right shall exist in any natural or corporate
17 person or group of persons to hinder, delay, limit, or suspend the
18 continuity or efficiency of any public utility service, either by
19 strike, lockout, or other means.

20 Sec. 4. Section 48-809, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 48-809 The ~~Commission of Industrial Relations~~ is hereby
23 ~~granted full power to~~ commission may adopt all reasonable and
24 proper regulations to govern its proceedings, the filing of
25 pleadings, the issuance and service of process, and the issuance of
26 subpoenas for attendance of witnesses, ~~the power to~~ may administer
27 oaths, and ~~to~~ may regulate the mode and manner of all its

1 investigations, inspections, hearings, and trials. ~~In~~ Except as
2 otherwise provided in the Industrial Relations Act, in the taking
3 of evidence, the rules of evidence, prevailing in the trial of
4 civil cases in Nebraska, shall be observed by the ~~Commission of~~
5 ~~Industrial Relations-~~ commission.

6 Sec. 5. Section 48-811, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 48-811 Except as provided in the State Employees
9 Collective Bargaining Act, any public employer, public employee, or
10 labor organization, or the Attorney General of Nebraska on his or
11 her own initiative or by order of the Governor, when any industrial
12 dispute exists between parties as set forth in section 48-810,
13 may file a petition with the ~~Commission of Industrial Relations~~
14 commission invoking its jurisdiction. No adverse action by threat
15 or harassment shall be taken against any public employee because of
16 any petition filing by such employee, and the employment status of
17 such employee shall not be altered in any way pending disposition
18 of the petition by the commission. If a change in the employment
19 status or in wages or terms and conditions of employment is
20 necessary, a motion by either party or by the parties jointly may
21 be presented to the commission at that time and if the commission
22 finds, based on a showing of evidence at a hearing thereon, that
23 the requested change is both reasonable and necessary to serve an
24 important public interest and that the employer has not considered
25 a change in the employment status, wages, or terms and conditions
26 of employment as a policy alternative on an equal basis with other
27 policy alternatives to achieve budgetary savings, the commission

1 may order that the requested change be allowed pending final
2 resolution of the pending industrial dispute.

3 Sec. 6. Section 48-813, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 48-813 (1) Whenever the jurisdiction of the ~~Commission of~~
6 ~~Industrial Relations~~ commission is invoked, notice of the pendency
7 of the proceedings shall be given in such manner as the commission
8 shall provide for serving a copy of the petition and notice of
9 filing upon the adverse party. ~~An~~ A public employer or labor
10 organization may be served by sending a copy of the petition filed
11 to institute the proceedings and a notice of filing, which shall
12 show the filing date, in the manner provided for service of a
13 summons in a civil action. Such employer or labor organization
14 shall have twenty days after receipt of the petition and notice of
15 filing in which to serve and file its response.

16 (2) When a petition is filed to resolve an industrial
17 dispute, a hearing shall mandatorily be held within sixty days from
18 the date of filing thereof. A recommended decision and order in
19 cases arising under section 48-818, an order in cases not arising
20 under section 48-818, and findings if required, shall mandatorily
21 be made and entered thereon within thirty days after such hearing.
22 The time requirements specified in this section may be extended
23 for good cause shown on the record or by agreement of the parties.
24 Failure to meet such mandatory time requirements shall not deprive
25 the commission of jurisdiction. However, if the commission fails
26 to hold a hearing on the industrial dispute within sixty days of
27 filing or has failed to make a recommended decision and order,

1 and findings of fact if required, in cases arising under section
2 48-818, or an order, and findings of fact if required, in cases
3 not arising under section 48-818, and findings, within thirty days
4 after the hearing and good cause is not shown on the record or
5 the parties to the dispute have not jointly stipulated to the
6 enlargement of the time limit, then either party may file an action
7 for mandamus in the district court for Lancaster County to require
8 the commission to hold the hearing or to render its order and
9 findings if required. For purposes of this section, the hearing
10 on an industrial dispute shall not be deemed completed until the
11 record is prepared and counsel briefs have been submitted, if such
12 are required by the commission.

13 (3) Any party, including the State of Nebraska or any
14 of its employer-representatives as defined in section 81-1371 or
15 any political subdivision of the State of Nebraska, may waive such
16 notice and may enter a voluntary appearance in any matter in the
17 ~~Commission of Industrial Relations-~~ commission. The giving of such
18 notice in such manner shall subject the public employers, the labor
19 organizations, and the persons therein to the jurisdiction of the
20 ~~Commission of Industrial Relations-~~ commission.

21 Sec. 7. Section 48-815, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 48-815 The commission shall provide itself with a proper
24 seal and shall have the power and authority to issue subpoenas and
25 to compel the attendance of witnesses and parties and to compel
26 the production of relevant books, correspondence, files, records,
27 and accounts of any person, corporation, association, or labor

1 organization affected, and to make any and all investigations
2 necessary to ascertain the truth in regard to the matters
3 before the commission. Subpoenas for the production of books,
4 correspondence, files, records, and accounts shall be issued by the
5 commission only after notice to the owner and person in possession
6 thereof and opportunity to be heard as to the relevancy of such
7 subpoena. When records are sought from private employers under
8 subsection (2) of section 48-818, the commission shall receive
9 documents and provide documents to the parties along with a
10 protective order prohibiting dissemination to parties outside the
11 litigation and protecting the identity of the private employer in
12 any proceeding or order.

13 Sec. 8. Section 48-816, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 48-816 (1)(a) After a petition has been filed under
16 section 48-811, the clerk shall immediately notify the commission
17 which shall promptly take such preliminary proceedings as may be
18 necessary to ensure prompt hearing and speedy adjudication of the
19 industrial dispute. The commission ~~shall have power and authority~~
20 may, upon its own initiative or upon request of a party to the
21 dispute, ~~to~~ make such temporary findings and orders as ~~may be~~
22 necessary to preserve and protect the status of the parties,
23 property, and public interest involved pending final determination
24 of the issues. In the event of an industrial dispute between ~~an a~~
25 public employer and ~~an a~~ public employee or a labor organization
26 when such public employer and public employee or labor organization
27 have failed or refused to bargain in good faith concerning the

1 matters in dispute, the commission may order such bargaining to
2 begin or resume, as the case may be, and may make any such
3 order or orders as may be appropriate to govern the situation
4 pending such bargaining. The commission shall require good faith
5 bargaining concerning the terms and conditions of employment of
6 its employees by any public employer. Upon the request of either
7 party, the commission shall require the parties to an industrial
8 dispute to submit to mediation or factfinding. Upon the request
9 of ~~both parties,~~ either party, a ~~special master~~ resolution officer
10 may be appointed if the parties are within the provisions of
11 section ~~48-811.02,~~ 11 of this act. The commission shall appoint
12 mediators, factfinders, or ~~special masters~~ resolution officers for
13 such purpose. Such orders for bargaining, mediation, factfinding,
14 or a ~~special master~~ resolution officer proceeding may be issued at
15 any time during the pendency of an action to resolve an industrial
16 dispute. To bargain in good faith ~~shall mean~~ means the performance
17 of the mutual obligation of the public employer and the labor
18 organization to meet at reasonable times and confer in good faith
19 with respect to wages, hours, and other terms and conditions of
20 employment or any question arising thereunder and the execution of
21 a written contract incorporating any agreement reached if requested
22 by either party, but such obligation does not compel either party
23 to agree to a proposal or require the making of a concession.

24 (b) In negotiations between a municipality, municipally
25 owned utility, or county and a labor organization, staffing related
26 to issues of safety shall be mandatory subjects of bargaining
27 and staffing relating to scheduling work, such as daily staffing,

1 staffing by rank, and overall staffing requirements, shall be
2 permissive subjects of bargaining.

3 (2) Except as provided in the State Employees Collective
4 Bargaining Act, public employers are hereby authorized to may
5 recognize employee organizations for the purpose of negotiating
6 collectively in the determination of and administration of
7 grievances arising under the terms and conditions of employment of
8 their public employees as provided in the Industrial Relations Act
9 and ~~to~~ may negotiate and enter into written agreements with such
10 employee organizations in determining such terms and conditions of
11 employment.

12 (3) (a) Except as provided in subdivisions (b) and (c) of
13 this subsection, a supervisor shall not be included in a single
14 bargaining unit with any other public employee who is not a
15 supervisor.

16 (b) All firefighters and police officers employed in the
17 fire department or police department of any ~~municipal corporation~~
18 municipality in a position or classification subordinate to the
19 chief of the department and his or her immediate assistant or
20 assistants holding authority subordinate only to the chief shall
21 be presumed to have a community of interest and may be included
22 in a single bargaining unit represented by ~~an~~ a public employee
23 organization for the purposes of the Industrial Relations Act.
24 Public employers shall be required to recognize ~~an~~ a public
25 employees bargaining unit composed of firefighters and police
26 officers holding positions or classifications subordinate to the
27 chief of the fire department or police department and his or her

1 immediate assistant or assistants holding authority subordinate
2 only to the chief when such bargaining unit is designated or
3 elected by public employees in the unit.

4 (c) All administrators employed by a Class V school
5 district shall be presumed to have a community of interest
6 and may join a single bargaining unit composed otherwise of
7 teachers and other certificated employees for purposes of the
8 Industrial Relations Act, except that the following administrators
9 shall be exempt: The superintendent, associate superintendent,
10 assistant superintendent, secretary and assistant secretary of the
11 board of education, executive director, administrators in charge
12 of the offices of state and federal relations and research,
13 chief negotiator, and administrators in the immediate office of
14 the superintendent. A Class V school district shall recognize
15 ~~an~~ a public employees bargaining unit composed of teachers and
16 other certificated employees and administrators, except the exempt
17 administrators, when such bargaining unit is formed by the public
18 employees as provided in section 48-838 and may recognize such
19 a bargaining unit as provided in subsection (2) of this section.
20 In addition, all administrators employed by a Class V school
21 district, except the exempt administrators, may form a separate
22 bargaining unit represented either by the same bargaining agent
23 for all collective-bargaining purposes as the teachers and other
24 certificated employees or by another collective-bargaining agent
25 of such administrators' choice. If a separate bargaining unit is
26 formed by election as provided in section 48-838, a Class V school
27 district shall recognize the bargaining unit and its agent for all

1 purposes of collective bargaining. Such separate bargaining unit
2 may also be recognized by a Class V school district as provided in
3 subsection (2) of this section.

4 (4) When ~~an~~ a public employee organization has been
5 certified as an exclusive collective-bargaining agent or recognized
6 pursuant to any other provisions of the Industrial Relations Act,
7 the appropriate public employer shall be and is hereby authorized
8 to negotiate collectively with such public employee organization in
9 the settlement of grievances arising under the terms and conditions
10 of employment of the public employees as provided in such act and
11 to negotiate and enter into written agreements with such public
12 employee organizations in determining such terms and conditions of
13 employment, including wages and hours.

14 (5) Upon receipt by ~~an~~ a public employer of a request
15 from a labor organization to bargain on behalf of public employees,
16 the duty to engage in good faith bargaining shall arise if
17 the labor organization has been certified by the commission or
18 recognized by the public employer as the exclusive bargaining
19 representative for the public employees in that bargaining unit.

20 (6) A party to an action filed with the commission
21 may request the commission to send survey forms or data request
22 forms. The requesting party shall prepare its own survey forms
23 or data request forms and shall provide the commission the names
24 and addresses of the entities to whom the documents shall be
25 sent, not to exceed twenty addresses in any case. All costs
26 resulting directly from the reproduction of such survey or data
27 request forms and the cost of mailing such forms shall be taxed

1 by the commission to the requesting party. The commission ~~shall~~
2 ~~have the authority~~ may (a) ~~to~~ make studies and analyses of and
3 act as a clearinghouse of information relating to conditions
4 of employment of public employees throughout the state, (b) ~~to~~
5 request from any government, and such governments are authorized
6 to provide, such assistance, services, and data as will enable it
7 properly to carry out its functions and powers, (c) ~~to~~ conduct
8 studies of problems involved in representation and negotiation,
9 including, but not limited to, those subjects which are for
10 determination solely by the appropriate legislative body, and
11 make recommendations from time to time for legislation based
12 upon the results of such studies, (d) ~~to~~ make available to
13 public employee organizations, governments, mediators, factfinding
14 boards and joint study committees established by governments, and
15 public employee organizations statistical data relating to wages,
16 benefits, and employment practices in public and private employment
17 applicable to various localities and occupations to assist them
18 to resolve complex issues in negotiations, and (e) ~~to~~ establish,
19 after consulting representatives of public employee organizations
20 and administrators of public services, panels of qualified persons
21 broadly representative of the public to be available to serve
22 as mediators, ~~special masters,~~ resolution officers, or members of
23 factfinding boards.

24 (7) (a) Except for those cases arising under section
25 48-818, the commission shall be ~~required to~~ make findings of facts
26 in all cases in which one of the parties to the dispute requests
27 findings. Such request shall be specific as to the issues on which

1 the party wishes the commission to make findings of fact.

2 (b) In cases arising under section 48-818, findings of
3 fact shall not be required of the commission unless both parties to
4 the dispute stipulate to the request and to the specific issues on
5 which findings of fact are to be made.

6 (c) If findings of fact are requested under subdivision
7 (a) or (b) of this subsection, the commission may require the
8 parties making the request to submit proposed findings of fact
9 to the commission on the issues on which findings of facts are
10 requested.

11 (d) In cases arising under section 48-818, the commission
12 shall issue a recommended decision and order, which decision and
13 order shall become final within ten days of entry unless either
14 party to the dispute files with the commission a request for a
15 posttrial conference. If such a request is filed, the commission
16 shall hold a posttrial conference within ten days of receipt of
17 such request and shall issue an order within ten days after holding
18 such posttrial conference, which order shall become the final order
19 in the case. The purpose of such posttrial conference shall be to
20 allow the commission to hear from the parties on those portions of
21 the recommended decision and order which is not based upon or which
22 mischaracterizes evidence in the record and to allow the commission
23 to correct any such errors after having heard the matter in a
24 conference setting in which all parties are represented.

25 Sec. 9. Section 48-817, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 48-817 After the hearing and any investigation, the

1 commission shall make all findings, findings of fact, recommended
2 decisions and orders, and decisions and orders in writing, which
3 findings, findings of fact, recommended decisions and orders,
4 and decisions and orders shall be entered of record. Except as
5 provided in the State Employees Collective Bargaining Act, the
6 final decision and order or orders shall be in effect from and
7 after the date therein fixed by the commission, but no such
8 order or orders shall be retroactive. ~~In~~ Except as provided
9 otherwise in the Industrial Relations Act, in the making of
10 any findings or orders in connection with any such industrial
11 dispute, the commission shall give no consideration to any evidence
12 or information which it may obtain through an investigation or
13 otherwise receive, except matters of which the district court
14 might take judicial notice, unless such evidence or information
15 is presented and made a part of the record in a hearing and
16 opportunity is given, after reasonable notice to all parties to the
17 controversy of the initiation of any investigation and the specific
18 contents of the evidence or information obtained or received, to
19 rebut such evidence or information either by cross-examination or
20 testimony.

21 Sec. 10. Section 48-818, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 48-818 (1) Except as provided in the State Employees
24 Collective Bargaining Act, the findings and order or orders
25 may establish or alter the scale of wages, hours of labor, or
26 conditions of employment, or any one or more of the same. In making
27 such findings and order or orders, the ~~Commission of Industrial~~

1 ~~Relations~~ commission shall establish rates of pay and conditions of
2 employment which are comparable to the prevalent wage rates paid
3 and conditions of employment maintained for the same or similar
4 work of workers exhibiting like or similar skills under the same
5 or similar working conditions. In establishing wage rates the
6 commission shall take into consideration the overall compensation
7 presently received by the employees, having regard not only to
8 wages for time actually worked but also to wages for time not
9 worked, including vacations, holidays, and other excused time, and
10 all benefits received, including insurance and pensions, and the
11 continuity and stability of employment enjoyed by the employees.
12 Any order or orders entered may be modified on the commission's own
13 motion or on application by any of the parties affected, but only
14 upon a showing of a change in the conditions from those prevailing
15 at the time the original order was entered.

16 (2) For purposes of industrial disputes involving public
17 employers other than school districts, educational service units,
18 and community colleges with their certificated and instructional
19 employees:

20 (a) Job matches shall be sufficient for comparison if
21 (i) evidence supports at least a seventy percent match based
22 on a composite of the duties and time spent performing those
23 duties and (ii) at least three job matches per classification are
24 available for comparison. If three job matches are not available,
25 the commission shall base its order on the historic relationship
26 of wages paid to such position over the last three fiscal years,
27 for which data is available, as compared to wages paid to a

1 position for which a minimum of three job matches are available.
2 The commission shall consider and use both public and private job
3 matches when available and appropriate, given the nature of the
4 work subject to comparison in a particular case;

5 (b) The commission shall adhere to the following criteria
6 when establishing an array:

7 (i) Geographically proximate public employers and private
8 employers and Nebraska public employers and private employers are
9 preferable for comparison;

10 (ii) The preferred size of an array is seven to thirteen
11 members. As few as five members may be chosen if all array members
12 are Nebraska employers;

13 (iii) If more than thirteen employers with job matches
14 are available, the commission shall limit the array to thirteen
15 members, based upon selecting array members with the highest number
16 of job matches at the highest job match percentage;

17 (iv) Nothing in subdivision (2) (b) of this section shall
18 prevent parties from stipulating to an array member that does not
19 otherwise meet the criteria in such subdivision, and nothing in
20 such subdivision shall prevent parties from stipulating to less
21 than seven or more than thirteen array members;

22 (v) The commission shall not require a balanced number
23 of larger or smaller employers, a balanced number of public or
24 private employers, or a balanced number of Nebraska or out-of-state
25 employers;

26 (vi) For private employers with more than one branch
27 facility in the geographic area of the array, only one branch

1 facility may be placed in the array and the one chosen shall
2 have the highest number of job matches at the highest job match
3 percentage;

4 (vii) If the array includes a public employer in
5 a metropolitan statistical area other than the metropolitan
6 statistical area in which the employer before the commission
7 is located, only one public employer from such metropolitan
8 statistical area may be included in the array;

9 (viii) Arrays for public utilities that produce
10 radioactive material and energy pursuant to section 70-627.02 shall
11 have at least four members in its array that produce radioactive
12 material and energy. For public utilities that generate, transmit,
13 and distribute power, the array shall include members that also
14 perform these functions. For a public utility serving a city of the
15 primary class the array shall only include public power districts
16 in Nebraska that generate, transmit, and distribute power and any
17 out-of-state utilities whose number of meters served is not more
18 than double or less than one-half of the number of meters served
19 by the public utility serving a city of the primary class unless
20 evidence establishes that there are substantial differences which
21 cause the work or conditions of employment to be dissimilar;

22 (ix) In constructing an array for a public utility,
23 the commission shall use fifty-mile concentric circles until it
24 reaches the optimum array pursuant to subdivision (2)(b)(ii) of
25 this section; and

26 (x) For a statewide public utility that provides service
27 to a majority of the counties in Nebraska, any Nebraska public or

1 private job match may be used without regard to the population or
2 full-time equivalent employment requirements of this section, and
3 any out-of-state job match may be used if the full-time equivalent
4 employment of the out-of-state employer is no more than double and
5 no less than one-half of the full time equivalent employment of the
6 bargaining unit of the statewide public utility in question;

7 (c) In determining same or similar working conditions,
8 the commission shall adhere to the following:

9 (i) Public employers and private employers in Nebraska
10 shall be presumed to provide same or similar working conditions
11 unless evidence establishes that there are substantial differences
12 which cause the work or conditions of employment to be dissimilar;

13 (ii) Public employers shall be presumed to provide the
14 same or similar working conditions if their population if the
15 public employer is a county or municipality, their number of
16 employees if the public employer is a public utility, or the size
17 of their student enrollment if the public employer is a school
18 district, an educational service unit, or a community college with
19 noncertificated and noninstructional school employees is not more
20 than double or less than one-half of the public employer before the
21 commission unless evidence establishes that there are substantial
22 differences which cause the work or conditions of employment to be
23 dissimilar;

24 (iii) Public employers located within a metropolitan
25 statistical area who meet the population requirements, if the
26 public employer is a county or municipality, or the size
27 requirement of their student enrollment, if the public employer

1 is a school district or an educational service unit, shall be
2 presumed to provide the same or similar working conditions if
3 the metropolitan statistical area in which they are located is
4 not more than double or less than one-half the metropolitan
5 statistical area population of the public employer before the
6 commission, unless evidence establishes that there are substantial
7 differences which cause the work or conditions of employment to be
8 dissimilar. Likewise, the presumption created by this subdivision
9 may be overcome in situations where evidence establishes that there
10 are substantial similarities which cause the work or conditions
11 of employment to be similar, allowing the commission to consider
12 public employers located within a metropolitan statistical area
13 even if the metropolitan statistical area population in which that
14 employer or employers are located is more than double or less
15 than one-half the metropolitan statistical area population of the
16 public employer before the commission. The burden of establishing
17 sufficient similarity is on the party seeking to include a public
18 employer located within a metropolitan statistical area which does
19 not meet the requirements established in this subdivision;

20 (iv) Public employers other than public utilities
21 which are not located within a metropolitan statistical area
22 shall not be compared to public employers or private employers
23 located in a metropolitan statistical area. For purposes of this
24 subdivision, metropolitan statistical area includes municipalities
25 with populations of fifty thousand inhabitants or more;

26 (v) In comparisons involving a city of the metropolitan
27 class, a city of the primary class, a county containing a city of

1 the metropolitan class or a city of the primary class, or a school
2 district, an educational service unit, or a community college
3 with noncertificated and noninstructional school employees, private
4 employers shall be presumed to provide the same or similar working
5 conditions if the total full-time equivalent employment of the
6 private employer is not more than double or less than one-half the
7 full-time equivalent employment of the public employer in question
8 unless evidence establishes that there are substantial differences
9 which cause the work or conditions of employment to be dissimilar;
10 and

11 (vi) In comparisons involving any political subdivision
12 other than a city of the metropolitan class, a city of the primary
13 class, a county containing a city of the metropolitan class or a
14 city of the primary class, or a school district, an educational
15 service unit or a community college with noncertificated and
16 noninstructional school employees, private employers shall be
17 presumed to provide the same or similar working conditions if
18 the total full-time equivalent employment of the private employer
19 is not more than double or less than one-half the full-time
20 equivalent employment of the bargaining unit involved in the
21 litigation with the public employer in question unless evidence
22 establishes that there are substantial differences which cause the
23 work or conditions of employment to be dissimilar;

24 (d) Prevalent shall be determined as follows: (i) For
25 numeric values, prevalent shall be the midpoint between the
26 arithmetic mean and the arithmetic median. All array members
27 shall be included in the calculations even if they do not provide

1 the specialty pay or benefit which has numeric value; and (ii)
2 for nonnumeric comparisons, prevalent shall be the mode that the
3 majority of the array members that provide such benefit if the
4 compared-to benefit is similar in nature. If there is no clear
5 mode, the benefit or working condition shall remain unaltered by
6 the commission;

7 (e) For any out-of-state public employer or private
8 employer, the parties may present economic variable evidence and
9 the commission shall determine what, if any, adjustment is to
10 be made if such evidence is presented. The commission shall not
11 require that any such economic variable evidence be shown to
12 directly impact the wages or benefits paid to employees by such
13 out-of-state public employer or private employer;

14 (f) In determining total or overall compensation, the
15 commission shall value every economic item even if the year in
16 question has expired. The commission shall require that all wage
17 and benefit levels be leveled over the twelve-month period in
18 dispute to account for increases or decreases which occur in the
19 wage or benefit levels provided by any array member during such
20 twelve-month period;

21 (g) The rules of evidence shall not be followed. The
22 commission shall receive evidence relating to array selection,
23 job match, and wages and benefits which have been assembled by
24 telephone, electronic transmission, or mail delivery and any such
25 evidence shall be accompanied by an affidavit of authenticity from
26 the employer or any other person with personal knowledge providing
27 such evidence. The commission, with the consent of the parties to

1 the dispute, and in the presence of the parties to the dispute, may
2 contact an individual employed by an employer under consideration
3 as an array member by telephone to inquire as to the nature
4 or value of a working condition, wage, or benefit provided by
5 that particular employer as long as the individual in question
6 has personal knowledge about the information being sought. The
7 commission may rely upon information gained in such inquiry for
8 its decision. Opinion testimony shall be received by the commission
9 based upon evidence provided in accordance with this subdivision.
10 Testimony concerning job match shall be received if job match
11 inquiries were conducted by telephone, electronic transmission, or
12 mail delivery if the witness providing such testimony verifies the
13 method of such job match inquiry and analysis;

14 (h) In determining the value of defined benefit and
15 defined contribution retirement plans and health insurance plans,
16 the commission shall use an hourly rate value calculation as
17 follows:

18 (i) Once the array has been chosen, each array member and
19 the public employer of the subject bargaining unit shall provide a
20 copy of its most recent defined benefit pension actuarial valuation
21 report. Each array member and the public employer of the subject
22 bargaining unit shall provide the most recent copy of its health
23 insurance plans, covering a twelve-month period, with associated
24 employer and employee costs, to the parties and the commission.
25 Each array member and the public employer of the subject bargaining
26 unit shall indicate which plans are most used. The plans that are
27 most used shall be used for comparison;

1 (ii) Once the actuarial valuation reports are received,
2 the parties shall have thirty calendar days to determine whether
3 to have the pensions actuarially valued at an hourly rate value
4 other than equal. The hourly rate value for defined benefit plans
5 shall be presumed to be equal to that of the array selected
6 unless one or both of the parties presents evidence establishing
7 that the actuarially derived annual normal cost of the pension
8 benefit for each job classification in the subject bargaining
9 unit is above or below the midpoint of the market average normal
10 cost and such midpoint figure shall be established by applying
11 uniform assumptions and methodology using the census of bargaining
12 unit employees subject to the petition to all points compared
13 using accepted actuarial methods attested to by an actuary holding
14 a current membership with the American Academy of Actuaries.
15 Any party who requests or presents evidence regarding actuarial
16 valuation of a defined benefit plan shall be responsible for
17 costs associated with such valuation and testimony. The actuarial
18 valuation is presumed valid, unless a party presents competent
19 actuarial evidence that the valuation is invalid;

20 (iii) The hourly rate value for defined contribution
21 plans shall be established upon comparison of employer
22 contributions;

23 (iv) The hourly rate value for health insurance shall be
24 established based upon premium payments;

25 (v) The commission shall not compare defined benefit
26 plans to defined contribution plans; and

27 (vi) The commission shall order increases or decreases in

1 wage rates by job classification based upon the hourly rate value
2 for these three benefits;

3 (i) For benefits other than defined benefit and defined
4 contribution retirement plans and health insurance plans, the
5 commission shall issue an order based upon a determination of
6 prevalency as determined under subdivision (2)(d) of this section;
7 and

8 (j) The commission shall issue an order regarding
9 increases or decreases in base wage rates or benefits as follows:

10 (i) The order shall be retroactive with respect to
11 increases and decreases to the beginning of the bargaining year in
12 dispute;

13 (ii) The parties shall have twenty-five calendar days to
14 negotiate modifications to wages and benefits. If no agreement is
15 reached, the commission's order shall be followed as issued;

16 (iii) The commission shall provide an offset to the
17 public employer when a lump-sum payment is due because benefits
18 were paid in excess of the prevalent as determined under
19 subdivision (2)(d) of this section or when benefits were paid below
20 the prevalent as so determined but wages were above prevalent;

21 (iv) The application of any decrease ordered in wages or
22 benefits by the commission shall be limited in application to newly
23 hired employees, voluntarily transferred employees, or employees
24 demoted to a lower job classification;

25 (v) All other employees in job classifications affected
26 by a commission-ordered decrease in wages shall be frozen at the
27 same level of all wages in effect at the time of filing of the

1 petition; and

2 (vi) The freeze shall last indefinitely and the
3 commission shall retain jurisdiction of the proceeding. Either
4 party may file an application with the commission to schedule a
5 hearing so that the party may present evidence supporting the
6 allegation that wages of the affected job classifications are now
7 below comparability as determined under the Industrial Relations
8 Act. If the evidence supports such allegation, the commission shall
9 issue an order ending the freeze of wages at a date in the future
10 which is an equal amount of time from the modification order as
11 the amount of time between the initial commission order and the
12 modification order. Nothing in this subdivision shall prohibit
13 parties from mutually agreeing to end an ordered freeze.

14 Sec. 11. (1) The Legislature finds that it is in the
15 public's interest that collective bargaining involving school
16 districts, educational service units, and community colleges
17 and their certificated and instructional employees commence and
18 conclude in a timely fashion consistent with school district
19 budgeting and financing requirements. To that end, the timelines
20 in this section shall apply when the public employer is a school
21 district, educational service unit, or community college.

22 (2) On or before September 1 of the year preceding
23 the contract year in question, the certificated and instructional
24 employees' collective bargaining agent shall request recognition
25 as bargaining agent. The governing board shall respond to such
26 request not later than the following October 1. A request for
27 recognition need not be filed if the certificated and instructional

1 employees' bargaining agent has been certified by the commission as
2 the exclusive collective-bargaining agent. On or before November 1
3 of the year preceding the contract year in question, negotiations
4 shall begin. There shall be no fewer than four negotiations
5 meetings between the certificated and instructional employees'
6 collective-bargaining agent and the governing board's bargaining
7 agent. Either party may seek a bargaining order pursuant to
8 subsection (1) of section 48-816 at any stage in the negotiations.
9 If an agreement is not reached on or before the following February
10 8, the parties shall submit to mandatory mediation or factfinding
11 as ordered by the commission pursuant to sections 48-811 and 48-816
12 unless the parties mutually agree in writing to forgo mandatory
13 mediation or factfinding.

14 (3) (a) The mediator or factfinder as ordered by the
15 commission under subsection (2) of this section shall be a
16 resolution officer. The commission shall provide the parties with
17 the names of five individuals qualified to serve as the resolution
18 officer. If the parties cannot agree on an individual, each party
19 shall alternately strike names. The remaining individual shall
20 serve as the resolution officer.

21 (b) The resolution officer may:

22 (i) Determine whether the issues are ready for
23 adjudication;

24 (ii) Identify for resolution terms and conditions of
25 employment that are in dispute and which were negotiated in good
26 faith but upon which no agreement was reached;

27 (iii) Accept stipulations;

1 (iv) Schedule hearings;
2 (v) Prescribe rules of conduct for conferences;
3 (vi) Order additional mediation if necessary;
4 (vii) Take any other action which may aid in resolution
5 of the industrial dispute; and

6 (viii) Consult with a party ex parte only with the
7 concurrence of all parties.

8 (c) The resolution officer shall choose the most
9 reasonable final offer on each issue in dispute. In making such
10 choice, he or she shall consider factors relevant to collective
11 bargaining between public employers and public employees, including
12 comparable rates of pay and conditions of employment as described
13 in section 48-818. The resolution officer shall not apply strict
14 rules of evidence. Persons who are not attorneys may present cases
15 to the resolution officer.

16 (d) If either party to a resolution officer proceeding
17 is dissatisfied with the resolution officer's decision, such party
18 shall have the right to file an action with the commission seeking
19 a determination of terms and conditions of employment pursuant to
20 section 48-818. Such action shall not constitute an appeal of the
21 resolution officer's decision, but rather shall be heard by the
22 commission as an action brought pursuant to section 48-818. The
23 commission shall resolve, pursuant to the mandates of such section,
24 all of the issues identified by either party and which were
25 recognized by the resolution officer as an industrial dispute. If
26 parties have not filed with the commission pursuant to subsection
27 (6) of this section, the decision of the resolution officer shall

1 be deemed final and binding.

2 (4) For purposes of this section, issue means broad
3 subjects of negotiation which are presented to the resolution
4 officer pursuant to this section. All aspects of wages are a single
5 issue, all aspects of insurance are a single issue, and all other
6 subjects of negotiations classified in broad categories are single
7 issues.

8 (5) On or before March 25 of the contract year in
9 question, negotiations, mediation, and factfinding shall end.

10 (6) If an agreement for the contract year in question has
11 not been achieved on or before March 25 of the contract year in
12 question, either party may, on or before the following April 10,
13 file a petition with the commission pursuant to sections 48-811 and
14 48-818 to resolve the industrial dispute for the contract year in
15 question. The commission shall render a decision on such industrial
16 dispute on or before September 15 of the contract year in question.

17 (7) Any existing collective-bargaining agreement will
18 continue in full force and effect until superseded by further
19 agreement of the parties or by an order of the commission. The
20 parties may continue to negotiate unresolved issues by mutual
21 agreement while the matter is pending with the commission.

22 (8) All collective-bargaining agreements shall be written
23 and executed by representatives of the governing board and
24 representatives of the certificated and instructional employees'
25 bargaining unit. The agreement shall contain at a minimum the
26 following:

27 (a) A salary schedule or objective method of determining

1 salaries;

2 (b) A description of benefits being provided or agreed
3 upon including a specific level of coverage provided in any group
4 insurance plan, a dollar amount, or percentage of premiums to be
5 paid, and by whom; and

6 (c) A provision that the existing agreement will continue
7 until replaced by a successor agreement or as amended by a final
8 order of the commission.

9 Sec. 12. When the employer in a proceeding under section
10 48-818 is a school district, educational service unit, or community
11 college, such employer may allege it lacks the ability to pay
12 the costs of the terms and conditions of employment ordered by
13 the commission. In such event, the commission shall hold an
14 additional hearing and allow the school district, educational
15 service unit, or community college to present competent evidence
16 establishing its inability to pay the award of the commission. The
17 bargaining unit in such case shall be permitted to offer evidence
18 in response thereto. Such award shall not be adjusted in the
19 absence of substantial evidence of the employer's inability to pay
20 the commission's award.

21 Sec. 13. (1) When a school district has a student
22 enrollment of less than two hundred students in grades kindergarten
23 through twelve or its corporate name under section 79-405 includes
24 a county having less than one thousand residents, such school
25 district shall negotiate with the bargaining agent for its
26 certificated employees economic terms which provide a financial
27 incentive to those employees accepting or continuing employment

1 with the school district in certificated teacher shortage areas as
2 defined annually by the State Department of Education, except that:

3 (a) Such incentive shall not exceed ten percent of
4 the base salary or wage established by the collective-bargaining
5 agreement for certificated employees not assigned to teacher
6 shortage areas; and

7 (b) The assignment within the certificated teacher
8 shortage area shall be filled by an employee holding a valid
9 Nebraska teaching certificate endorsed in the teacher shortage
10 area.

11 (2) When a school district has a school building
12 or buildings identified by the State Department of Education
13 as an academically underachieving school, such school district
14 shall negotiate with the bargaining agent for its certificated
15 employees economic terms which provide a financial incentive
16 to certificated employees accepting or continuing employment
17 with the school district who are assigned to teach at the
18 underachieving school, except that such incentive shall not exceed
19 twenty percent of the base salary or wage established by the
20 collective-bargaining agreement for certificated employees not
21 assigned to an underachieving school.

22 (3) Notwithstanding the mandatory duty to negotiate
23 incentives in subsections (1) and (2) of this section, the
24 incentive payments may be offered to certificated employees at
25 the sole discretion of the school district. Nothing in this section
26 shall be construed to alter a school district's right to assign
27 personnel to particular schools.

1 (4) Incentive payments or programs under subsection (1)
2 or (2) of this section shall be considered by the commission in
3 its calculations and as part of total compensation of the school
4 district in resolving an industrial dispute or in entering a wage
5 order.

6 Sec. 14. Section 48-824, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 48-824 (1) It is a prohibited practice for any public
9 employer, public employee, public employee organization, or
10 collective-bargaining agent to refuse to negotiate in good faith
11 with respect to mandatory topics of bargaining.

12 (2) It is a prohibited practice for any public employer
13 or the public employer's negotiator to:

14 (a) Interfere with, restrain, or coerce employees in the
15 exercise of rights granted by the Industrial Relations Act;

16 (b) Dominate or interfere in the administration of any
17 public employee organization;

18 (c) Encourage or discourage membership in any public
19 employee organization, committee, or association by discrimination
20 in hiring, tenure, or other terms or conditions of employment;

21 (d) Discharge or discriminate against ~~an~~ a public
22 employee because the employee has filed an affidavit, petition,
23 or complaint or given any information or testimony under the
24 Industrial Relations Act or because the public employee has
25 formed, joined, or chosen to be represented by any public employee
26 organization;

27 (e) Refuse to negotiate collectively with representatives

1 of collective-bargaining agents as required by the Industrial
2 Relations Act;

3 (f) Deny the rights accompanying certification or
4 recognition granted by the Industrial Relations Act; and

5 (g) Refuse to participate in good faith in any impasse
6 procedures for public employees as set forth in the Industrial
7 Relations Act.

8 (3) It is a prohibited practice for any public employee,
9 public employee organization, or bargaining unit or for any
10 representative or collective-bargaining agent to:

11 (a) Interfere with, restrain, coerce, or harass any
12 public employee with respect to any of the public employee's rights
13 granted by the Industrial Relations Act;

14 (b) Interfere with, restrain, or coerce ~~an~~ a public
15 employer with respect to rights granted by the Industrial Relations
16 Act or with respect to selecting a representative for the purposes
17 of negotiating collectively on the adjustment of grievances;

18 (c) Refuse to bargain collectively with ~~an~~ a public
19 employer as required by the Industrial Relations Act; and

20 (d) Refuse to participate in good faith in any impasse
21 procedures for public employees as set forth in the Industrial
22 Relations Act.

23 (4) The expressing of any view, argument, or opinion, or
24 the dissemination thereof, whether in written, printed, graphic, or
25 visual form, is not evidence of any unfair labor practice under
26 any of the provisions of the Industrial Relations Act if such
27 expression contains no threat of reprisal or force or promise of

1 benefit.

2 Sec. 15. Section 48-838, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 48-838 (1) The commission shall determine questions
5 of representation for purposes of collective bargaining for
6 and on behalf of public employees and shall make rules and
7 regulations for the conduct of elections to determine the exclusive
8 collective-bargaining agent for public employees, except that
9 in no event shall a contract between ~~an~~ a public employer and
10 an exclusive collective-bargaining agent act as a bar for more
11 than three years to any other party seeking to represent public
12 employees, nor shall any contract bar for more than three years
13 a petition by public employees seeking an election to revoke the
14 authority of an agent to represent them. Except as provided in the
15 State Employees Collective Bargaining Act, the commission shall
16 certify the exclusive collective-bargaining agent for employees
17 affected by the Industrial Relations Act following an election by
18 secret ballot, which election shall be conducted according to rules
19 and regulations established by the commission.

20 (2) The election shall be conducted by one member of
21 the commission who shall be designated to act in such capacity
22 by the presiding officer of the commission, or the commission
23 may appoint the clerk of the district court of the county in
24 which the principal office of the public employer is located to
25 conduct the election in accordance with the rules and regulations
26 established by the commission. Except as provided in the State
27 Employees Collective Bargaining Act, the commission shall also

1 determine the appropriate unit for bargaining and for voting in the
2 election, and in making such determination, the commission shall
3 consider established bargaining units and established policies
4 of the public employer. It shall be presumed, in the case
5 of governmental subdivisions such as municipalities, counties,
6 power districts, or utility districts with no previous history of
7 collective bargaining, that units of public employees of less than
8 departmental size shall not be appropriate.

9 (3) Except as provided in the State Employees Collective
10 Bargaining Act, the commission shall not order an election until
11 it has determined that at least thirty percent of the employees in
12 an appropriate unit have requested in writing that the commission
13 hold such an election. Such request in writing by an employee may
14 be in any form in which an employee specifically either requests
15 an election or authorizes the employee organization to represent
16 him or her in bargaining, or otherwise evidences a desire that an
17 election be conducted. Such request of an employee shall not become
18 a matter of public record. No election shall be ordered in one unit
19 more than once a year.

20 (4) Except as provided in the State Employees Collective
21 Bargaining Act, the commission shall only certify an exclusive
22 collective-bargaining agent if a majority of the employees voting
23 in the election vote for the agent. A certified exclusive
24 collective-bargaining agent shall represent all employees in the
25 appropriate unit with respect to wages, hours, and conditions of
26 employment, except that such right of exclusive recognition shall
27 not preclude any employee, regardless of whether or not he or she

1 is a member of a labor organization, from bringing matters to the
2 attention of his or her superior or other appropriate officials.

3 Any employee may choose his or her own representative
4 in any grievance or legal action regardless of whether or not an
5 exclusive collective-bargaining agent has been certified. If an
6 employee who is not a member of the labor organization chooses
7 to have legal representation from the labor organization in any
8 grievance or legal action, such employee shall reimburse the labor
9 organization for his or her pro rata share of the actual legal fees
10 and court costs incurred by the labor organization in representing
11 the employee in such grievance or legal action.

12 The certification of an exclusive collective-bargaining
13 agent shall not preclude any public employer from consulting with
14 lawful religious, social, fraternal, or other similar associations
15 on general matters affecting public employees so long as such
16 contracts do not assume the character of formal negotiations
17 in regard to wages, hours, and conditions of employment. Such
18 consultations shall not alter any collective-bargaining agreement
19 which may be in effect.

20 Sec. 16. Changes made to the Industrial Relations Act
21 by this legislative bill shall apply to petitions filed with the
22 commission on or after October 1, 2011.

23 Sec. 17. Section 79-824, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 79-824 For purposes of sections 79-824 to 79-842, unless
26 the context otherwise requires:

27 (1) Certificated employee means and includes all teachers

1 and administrators as defined in section 79-101, other than
2 substitute teachers, who are employed one-half time or more by
3 any class of school district;

4 (2) School board means the governing board or body of any
5 class of school district;

6 (3) Probationary certificated employee means a teacher
7 or administrator who has served under a contract with the school
8 district for less than three successive school years in any school
9 district, unless extended one or two years by a majority vote
10 of the board in a Class IV or V school district, except that
11 after September 1, 1983, in Class IV and V school districts the
12 requirement shall be three successive school years. the school
13 board grants permanent status within such three-year probationary
14 period as provided in section 79-828. Probationary certificated
15 employee also means superintendents, regardless of length of
16 service;

17 (4) Just cause means: (a) Incompetency, which includes,
18 but is not limited to, demonstrated deficiencies or shortcomings
19 in knowledge of subject matter or teaching or administrative
20 skills; (b) neglect of duty; (c) unprofessional conduct; (d)
21 insubordination; (e) immorality; (f) physical or mental incapacity;
22 (g) failure to give evidence of professional growth as required in
23 section 79-830; or (h) other conduct which interferes substantially
24 with the continued performance of duties;

25 (5) Permanent certificated employee means a teacher or
26 administrator who has served the probation period as defined in
27 this section; and

1 (6) School year, for purposes of employment, means
2 three-fourths of the school year or more on duty, exclusive of
3 summer school.

4 A certificated employee who has been hired to fulfill the
5 duties of another certificated employee who is on leave of absence
6 shall not accrue rights under sections 79-824 to 79-842 during the
7 period that the employee is fulfilling such duties.

8 Sec. 18. Section 79-828, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 79-828 (1) The contract of a probationary certificated
11 employee shall be deemed renewed and remain in full force and
12 effect unless amended or not renewed in accordance with sections
13 79-824 to 79-842.

14 (2) The purpose of the probationary period is to allow
15 the employer an opportunity to evaluate, assess, and assist the
16 employee's professional skills and work performance prior to the
17 employee obtaining permanent status.

18 All probationary certificated employees employed by Class
19 I, II, III, and VI school districts shall, during each year of
20 probationary employment, be evaluated at least once each semester,
21 unless the probationary certificated employee is a superintendent,
22 in accordance with the procedures outlined below:

23 The probationary employee shall be observed and
24 evaluation shall be based upon actual classroom observations for
25 an entire instructional period. If deficiencies are noted in
26 the work performance of any probationary employee, the evaluator
27 shall provide the teacher or administrator at the time of the

1 observation with a list of deficiencies, a list of suggestions
2 for improvement and assistance in overcoming the deficiencies, and
3 followup evaluations and assistance when deficiencies remain.

4 A school board may grant a probationary certificated
5 employee performing teaching duties permanent status prior to
6 completion of the three-year probationary period based on frequent
7 evaluations that demonstrate exemplary performance, except that
8 such action by the governing board shall take place no later than
9 April 15 of the year preceding the school year such permanent
10 status takes effect.

11 If the probationary certificated employee is a
12 superintendent, he or she shall be evaluated twice during the first
13 year of employment and at least once annually thereafter.

14 Any certificated employee employed prior to September
15 1, 1982, by the school board of any Class I, II, III, or VI
16 school district shall serve the probationary period required by law
17 prior to such date and shall not be subject to any extension of
18 probation.

19 (3) If the school board or the superintendent or
20 superintendent's designee determines that it is appropriate to
21 consider whether the contract of a probationary certificated
22 employee or the superintendent should be amended or not renewed for
23 the next school year, such certificated employee shall be given
24 written notice that the school board will consider the amendment
25 or nonrenewal of such certificated employee's contract for the
26 ensuing school year. Upon request of the certificated employee,
27 notice shall be provided which shall contain the written reasons

1 for such proposed amendment or nonrenewal and shall be sufficiently
2 specific so as to provide such employee the opportunity to prepare
3 a response and the reasons set forth in the notice shall be
4 employment related.

5 (4) The school board may elect to amend or not renew
6 the contract of a probationary certificated employee for any reason
7 it deems sufficient if such nonrenewal is not for constitutionally
8 impermissible reasons, and such nonrenewal shall be in accordance
9 with sections 79-824 to 79-842. Amendment or nonrenewal for reason
10 of reduction in force shall be subject to sections 79-824 to 79-842
11 and 79-846 to 79-849.

12 (5) Within seven calendar days after receipt of
13 the notice, the probationary certificated employee may make a
14 written request to the secretary of the school board or to the
15 superintendent or superintendent's designee for a hearing before
16 the school board.

17 (6) Prior to scheduling of action or a hearing on
18 the matter, if requested, the notice of possible amendment
19 or nonrenewal and the reasons supporting possible amendment or
20 nonrenewal shall be considered a confidential employment matter as
21 provided in sections 79-539, 79-8,109, and 84-1410 and shall not be
22 released to the public or any news media.

23 (7) At any time prior to the holding of a hearing or
24 prior to final determination by the school board to amend or not
25 renew the contract involved, the probationary certificated employee
26 may submit a letter of resignation for the ensuing year, which
27 resignation shall be accepted by the school board.

1 (8) The probationary certificated employee shall be
2 afforded a hearing which shall not be required to meet the
3 requirements of a formal due process hearing as set forth in
4 section 79-832 but shall be subject to section 79-834.

5 Sec. 19. Section 79-852, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 79-852 The collective-bargaining agreement of the school
8 district or districts forming the unified system or reorganized
9 school district with the largest number of teacher employees shall
10 continue in full force and effect and govern all teachers in the
11 unified system or reorganized school district until replaced by
12 a successor agreement, and the teachers employed by the unified
13 system or reorganized school district and previously employed by
14 the school districts involved in the formation of the unified
15 system or reorganized school district shall automatically be
16 included in that bargaining unit but no certificated public
17 school employee shall be compelled to join any organization
18 or association. If only one collective-bargaining agreement is
19 in effect in the school districts which are a part of the
20 unification or reorganization, that collective-bargaining agreement
21 shall continue in full force and effect until replaced by a
22 successor agreement and the teachers employed by the other school
23 districts involved in the unification or reorganization shall
24 automatically be included in that bargaining unit. For purposes of
25 the Industrial Relations Act, the unified system shall be deemed ~~an~~
26 a public employer as defined in section 48-801.

27 Sec. 20. Section 79-2116, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 79-2116 Terms and conditions of employment of school
3 employees providing services for an elementary learning center
4 shall be established by the negotiated agreement of the learning
5 community employing such school employees to provide services.

6 For certificated employees as defined in ~~subdivision (1) of~~
7 section 79-824, the learning community shall be deemed to be
8 ~~an~~ a public employer as defined in ~~subdivision (4) of~~ section
9 48-801. Compensation paid to school employees for services provided
10 to a learning community shall be subject to the School Employees
11 Retirement Act unless such employee is employed by a Class V school
12 district, in which case compensation paid such school employee
13 shall be subject to the Class V School Employees Retirement Act.

14 Sec. 21. Section 81-1369, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 81-1369 Sections 81-1369 to ~~81-1390~~ 81-1388 shall be
17 known and may be cited as the State Employees Collective Bargaining
18 Act.

19 Sec. 22. Section 81-1371, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 81-1371 For purposes of the State Employees Collective
22 Bargaining Act, unless the context otherwise requires:

23 (1) Chief Negotiator shall mean the Chief Negotiator
24 of the Division of Employee Relations of the Department of
25 Administrative Services;

26 (2) Commission shall mean the Commission of Industrial
27 Relations;

1 (3) Division shall mean the Division of Employee
2 Relations of the Department of Administrative Services;

3 (4) Employee or state employee shall mean any employee of
4 the State of Nebraska;

5 (5) Employer or state employer shall mean the State of
6 Nebraska and shall not include any political subdivision thereof;

7 (6) Employer-representative shall mean (a) for
8 negotiations involving employees of the University of Nebraska,
9 the Board of Regents, (b) for negotiations involving employees
10 of the Nebraska state colleges, the Board of Trustees of the
11 Nebraska State Colleges, (c) for negotiations involving employees
12 of other constitutional agencies, the governing officer or body for
13 each such agency, and (d) for negotiations involving other state
14 employees, the Governor;

15 (7) Grievance shall mean a management action resulting
16 in an injury, injustice, or wrong involving a misinterpretation or
17 misapplication of applicable labor contracts if so agreed to by the
18 appropriate parties;

19 (8) Issue shall mean broad subjects of negotiation which
20 are presented to the ~~Special Master~~ commission pursuant to section
21 81-1382. All aspects of wages shall be a single issue, all aspects
22 of insurance shall be a single issue, and all other subjects of
23 negotiations classified in broad categories shall be single issues;

24 (9) Mandatory topic or topics of bargaining shall mean
25 those subjects of negotiation on which employers must negotiate
26 pursuant to the Industrial Relations Act, including terms and
27 conditions of employment which may otherwise be provided by law for

1 state employees, except when specifically prohibited by law from
2 being a subject of bargaining; and

3 (10) Meet-and-confer rights shall mean the rights of
4 employees to discuss wages, hours, and other terms and conditions
5 of employment with the appropriate employer-representative but
6 shall not require either party to enter into a written agreement.
7 Employees afforded meet-and-confer rights shall not be entitled to
8 utilize the impasse resolution procedures provided in the State
9 Employees Collective Bargaining Act or to file a petition with the
10 commission invoking its jurisdiction as provided in the Industrial
11 Relations Act for the purpose of obtaining an order or orders
12 under section 48-818. Meet-and-confer rights shall not apply to any
13 bargaining unit other than a supervisory unit. ~~and~~

14 ~~(11) Special Master shall mean a factfinder chosen~~
15 ~~pursuant to section 81-1380.~~

16 Sec. 23. Section 81-1372, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 81-1372 The State Employees Collective Bargaining Act
19 shall be deemed ~~cumulative~~ controlling for state employees and
20 state employers covered by such act and is supplementary to
21 the Industrial Relations Act except when otherwise specifically
22 provided or when inconsistent with the Industrial Relations Act,
23 in which case the State Employees Collective Bargaining Act shall
24 prevail.

25 The State of Nebraska, its employees, employee
26 organizations, and exclusive collective-bargaining agents
27 shall have all the rights and responsibilities afforded

1 employers, employees, employee organizations, and exclusive
2 collective-bargaining agents pursuant to the Industrial Relations
3 Act to the extent that such act is not inconsistent with the State
4 Employees Collective Bargaining Act.

5 Sec. 24. Section 81-1373, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 81-1373 (1) For the purpose of implementing the state
8 employees' right to organize for the purpose of collective
9 bargaining, there are hereby created twelve bargaining units
10 for all state agencies except the University of Nebraska, the
11 Nebraska state colleges, and other constitutional offices. The
12 units shall consist of state employees whose job classifications
13 are occupationally and functionally related and who share a
14 community of interest. The bargaining units shall be:

15 (a) Maintenance, Trades, and Technical, which unit is
16 composed of generally recognized blue collar and technical classes,
17 including highway maintenance workers, carpenters, plumbers,
18 electricians, print shop workers, auto mechanics, engineering aides
19 and associates, and similar classes;

20 (b) Administrative Support, which unit is composed of
21 clerical and administrative nonprofessional classes, including
22 typists, secretaries, accounting clerks, computer operators, office
23 service personnel, and similar classes;

24 (c) Health and Human Care Nonprofessional, which unit is
25 composed of institutional care classes, including nursing aides,
26 psychiatric aides, therapy aides, and similar classes;

27 (d) Social Services and Counseling, which unit is

1 composed of generally professional-level workers providing services
2 and benefits to eligible persons. Classes shall include job
3 service personnel, income maintenance personnel, social workers,
4 counselors, and similar classes;

5 (e) Administrative Professional, which unit is composed
6 of professional employees with general business responsibilities,
7 including accountants, buyers, personnel specialists, data
8 processing personnel, and similar classes;

9 (f) Protective Service, which unit is composed of
10 institutional security personnel, including correctional officers,
11 building security guards, and similar classes;

12 (g) Law Enforcement, which unit is composed of employees
13 holding powers of arrest, including Nebraska State Patrol officers
14 and sergeants, conservation officers, fire marshal personnel, and
15 similar classes. Sergeants, investigators, and patrol officers
16 employed by the Nebraska State Patrol as authorized in section
17 81-2004 shall be presumed to have a community of interest with each
18 other and shall be included in this bargaining unit notwithstanding
19 any other provision of law which may allow for the contrary;

20 (h) Health and Human Care Professional, which unit
21 is composed of community health, nutrition, and health service
22 professional employees, including nurses, doctors, psychologists,
23 pharmacists, dietitians, licensed therapists, and similar classes;

24 (i) Examining, Inspection, and Licensing, which unit
25 is composed of employees empowered to review certain public and
26 business activities, including driver-licensing personnel, revenue
27 agents, bank and insurance examiners who remain in the State

1 Personnel System under sections 8-105 and 44-119, various public
2 health and protection inspectors, and similar classes;

3 (j) Engineering, Science, and Resources, which unit
4 is composed of specialized professional scientific occupations,
5 including civil and other engineers, architects, chemists,
6 geologists and surveyors, and similar classes;

7 (k) Teachers, which unit is composed of employees
8 required to be licensed or certified as a teacher; and

9 (l) Supervisory, which unit is composed of employees who
10 are supervisors as defined in section 48-801.

11 All employees who are excluded from bargaining units
12 pursuant to the Industrial Relations Act, all employees of the
13 personnel division of the Department of Administrative Services,
14 and all employees of the Division of Employee Relations of the
15 Department of Administrative Services shall be excluded from any
16 bargaining unit of state employees.

17 (2) Any employee organization, including one which
18 represents other state employees, may be certified or recognized
19 as provided in the Industrial Relations Act as the exclusive
20 collective-bargaining agent for a supervisory unit, except that
21 such unit shall not have full collective-bargaining rights but
22 shall be afforded only meet-and-confer rights.

23 (3) It is the intent of the Legislature that professional
24 and managerial employee classifications and office and service
25 employee classifications be grouped in broad occupational units
26 for the University of Nebraska and the Nebraska state colleges
27 established on a university-wide or college-system-wide basis,

1 including all campuses within the system. Any unit entirely
2 composed of supervisory employees of the University of Nebraska or
3 the Nebraska state colleges shall be afforded only meet-and-confer
4 rights. ~~Except as provided in subsection (4) of this section, the~~
5 The bargaining units for academic, faculty, and teaching employees
6 of the University of Nebraska and the Nebraska state colleges shall
7 continue as they exist existed on April 9, 1987, plus the addition
8 of Kearney State College, and any adjustments thereto or new units
9 therefor shall continue to be determined pursuant to the Industrial
10 Relations Act.

11 ~~(4) Except as provided in subdivision (2)(c) of section~~
12 ~~85-1,119, when the institution now known as Kearney State College~~
13 ~~is transferred to the control and management of the Board of~~
14 ~~Regents of the University of Nebraska, any academic, faculty, and~~
15 ~~teaching employees of Kearney State College who are included in~~
16 ~~a bargaining unit and represented by a certified or recognized~~
17 ~~collective-bargaining agent as of June 30, 1991, shall, on~~
18 ~~and after July 1, 1991, compose a separate bargaining unit of~~
19 ~~University of Nebraska employees, and such agent shall be entitled~~
20 ~~to certification by the commission for the new bargaining unit~~
21 ~~without the necessity of a representation election. Any adjustments~~
22 ~~to the unit or the representation thereof shall be determined~~
23 ~~pursuant to the Industrial Relations Act.~~

24 ~~(5)~~ (4) Other constitutional offices shall continue
25 to subscribe to the procedures for unit determination in the
26 Industrial Relations Act, except that the commission is further
27 directed to determine the bargaining units in such manner as to (a)

1 reduce the effect of overfragmentation of bargaining units on the
2 efficiency of administration and operations of the constitutional
3 office and (b) be consistent with the administrative structure
4 of the constitutional office. Any unit entirely composed of
5 supervisory employees of a constitutional office shall be afforded
6 only meet-and-confer rights.

7 Sec. 25. Section 81-1375, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 81-1375 Certified collective-bargaining agents
10 representing bargaining units other than those prescribed in
11 section 81-1373 shall not utilize the impasse procedures provided
12 for in sections ~~81-1380~~ 81-1381 to 81-1385 nor file a petition
13 with the commission invoking its jurisdiction as provided in the
14 Industrial Relations Act, ~~but may, for two years from April 9,~~
15 ~~1987, continue to meet and confer with employer-representatives~~
16 ~~regarding those employees in such units as long as no other~~
17 ~~employee organization has been certified as the exclusive~~
18 ~~collective-bargaining agent for such employees pursuant to section~~
19 ~~81-1374 and may represent individual employees on grievance~~
20 ~~matters. Parties engaged in the meet-and-confer process shall not~~
21 ~~be entitled to file any case with the commission to establish~~
22 ~~any rate of pay or condition of employment, except that if those~~
23 ~~parties which meet and confer during this two-year period do not~~
24 ~~reach an agreement by June 30 preceding the beginning of the fiscal~~
25 ~~year, the existing agreement or contract shall be continued until~~
26 ~~such time as an agreement or contract for the remainder of the~~
27 ~~fiscal year has been reached.~~

1 Sec. 26. Section 81-1378, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 81-1378 (1) The dates indicated in sections 81-1379
4 to 81-1384 shall refer to those dates immediately preceding the
5 beginning of the contract period for which negotiations are being
6 conducted.

7 (2) When any date provided in sections 81-1379 to 81-1384
8 falls on a Saturday, a Sunday, or any day declared by statutory
9 enactment or proclamations of the Governor to be a holiday, the
10 next following day which is not a Saturday, a Sunday, or a day
11 declared by the enactment or proclamation to be a holiday shall be
12 deemed to be the day indicated by such date.

13 (3) The dates indicated in sections 81-1382 and 81-1383
14 are jurisdictional. Failure of either party to act in a timely
15 manner shall result in a jurisdictional bar for either the
16 commission or Supreme Court.

17 Sec. 27. Section 81-1379, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 81-1379 The Chief Negotiator and any other
20 employer-representative and the exclusive collective-bargaining
21 agent shall commence negotiations on or prior to the second
22 Wednesday in September of the year preceding the beginning of the
23 contract period, except that the first negotiations commenced by
24 any bargaining unit may commence after such September date in
25 order to accommodate any unresolved representation proceedings.
26 All negotiations shall be completed on or before March 15 of the
27 following year.

1 All negotiated agreements shall be in writing and signed
2 by the parties. The authority to enter into the agreed-upon
3 contract shall be vested in the following:

4 (1) For the University of Nebraska, the Board of Regents;

5 (2) For the Nebraska state colleges, the Board of
6 Trustees of the Nebraska State Colleges;

7 (3) For other constitutional offices, the head of such
8 office;

9 (4) For all other agencies, the Governor; and

10 (5) For the bargaining unit, a majority of those voting
11 on ratification after notice of the contract terms is given and a
12 secret ballot vote has been taken.

13 Nothing in the State Employees Collective Bargaining Act
14 shall be construed to prohibit supplementary bargaining on behalf
15 of employees in part of a bargaining unit concerning matters
16 uniquely affecting such employees or cooperation and coordination
17 of bargaining between two or more bargaining units. Supplementary
18 bargaining in regard to employees for whom the Governor is
19 the employer-representative shall be the responsibility of the
20 Chief Negotiator and may be assigned to his or her designated
21 representative.

22 Any agreements entered into pursuant to this section may
23 be adjusted after March 15 only to reflect any order issued by the
24 commission, ~~the Court of Appeals,~~ or the Supreme Court.

25 Sec. 28. Section 81-1381, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 81-1381 If the parties in labor contract negotiations

1 do not reach a voluntary agreement by January 1, the dispute
2 shall be submitted to a mediator mutually selected by the parties
3 or appointed by the Federal Mediation and Conciliation Service.
4 Mediation may continue indefinitely at the request of either party
5 or when appropriate in the judgment of the mediator. ~~or Special~~
6 ~~Master.~~ If necessary, mediation may continue after the exchange of
7 final offers.

8 Sec. 29. Section 81-1382, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 81-1382 (1) No later than January 10, the parties in
11 labor contract negotiations shall reduce to writing and sign all
12 agreed-upon issues and exchange final offers on each unresolved
13 issue. Final offers may not be amended or modified without the
14 concurrence of the other party.

15 (2) No later than January 15, the parties in labor
16 contract negotiations shall submit all unresolved issues that
17 resulted in impasse to the ~~Special Master.~~ commission. No party
18 shall submit an issue to the commission that was not subject
19 to negotiations. The ~~Special Master~~ commission shall conduct a
20 prehearing conference. ~~He or she~~ and shall have the authority to:

21 (a) Determine whether the issues are ready for
22 adjudication;

23 (b) Accept stipulations;

24 (c) Schedule hearings;

25 (d) Prescribe rules of conduct for the hearings;

26 (e) Order additional mediation if necessary; and

27 (f) Take any other actions which may aid in the disposal

1 of the action.

2 The ~~Special Master~~ commission may consult with the
3 parties ex parte only with the concurrence of both parties.

4 ~~(3) The Special Master shall choose the most reasonable~~
5 ~~final offer on each issue in dispute. In making such choice, he~~
6 ~~or she shall consider factors relevant to collective bargaining~~
7 ~~between public employers and public employees, including comparable~~
8 ~~rates of pay and conditions of employment as described in section~~
9 ~~48-818. The Special Master shall not apply strict rules of~~
10 ~~evidence. Persons who are not attorneys may present cases to~~
11 ~~the Special Master. The Special Master shall issue his or her~~
12 ~~ruling on or before February 15.~~

13 Sec. 30. Section 81-1383, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 81-1383 ~~(1) The Special Master's ruling shall be~~
16 ~~binding, except that the Chief Negotiator or any other~~
17 ~~employer-representative or the certified collective-bargaining~~
18 ~~agent may appeal an adverse ruling on an issue to the commission~~
19 ~~on or before March 15. No party shall file an appeal after March~~
20 ~~15. No party shall present an issue to the commission that was~~
21 ~~not subject to negotiations and ruled upon by the Special Master.~~
22 ~~There shall be no change in the unresolved issues while the appeal~~
23 ~~is pending.~~

24 ~~(2) The commission shall show significant deference to~~
25 ~~the Special Master's ruling and shall only set the ruling aside~~
26 ~~upon a finding that the ruling is significantly disparate from~~
27 ~~prevalent rates of pay or conditions of employment as determined by~~

1 the commission pursuant to section 48-818. The commission shall not
2 find the Special Master's ruling to be significantly disparate from
3 prevalent rates of pay or conditions of employment in any instance
4 when the prevalent rates of pay or conditions of employment, as
5 determined by the commission pursuant to section 48-818, fall
6 between the final offers of the parties.

7 (3) If the commission does not defer to the Special
8 Master's ruling, it shall enter an order implementing the final
9 offer on each issue appealed which would result in rates of pay and
10 conditions of employment most comparable with the prevalent rates
11 of pay and conditions of employment determined by it pursuant to
12 section 48-818. Under no circumstances shall the commission enter
13 an order on an issue which does not implement one of the final
14 offers of the parties. Nothing in this section shall prohibit the
15 commission from deferring to the Special Master's ruling if it
16 finds that the ruling would not result in significant disparity
17 with the prevalent rates of pay and conditions of employment as it
18 has determined pursuant to section 48-818.

19 (1) No later than March 1, the commission shall enter an
20 order on each unresolved issue.

21 (2) (a) The commission's order shall establish rates of
22 pay and conditions of employment which are comparable to the
23 prevalent wage rates paid and conditions of employment maintained
24 by peer employers for the same or similar work of workers
25 exhibiting like or similar skills under the same or similar
26 working conditions.

27 (b) In establishing wage rates, the commission shall

1 take into consideration the overall compensation received by the
2 employees at the time of the negotiations, having regard to:

3 (i) Wages for time actually worked;

4 (ii) Wages for time not worked, including vacations,
5 holidays, and other excused time, and all benefits received,
6 including insurance and pensions; and

7 (iii) The continuity and stability of employment enjoyed
8 by the employees.

9 (c) For purposes of determining peer employer
10 comparability, the following factors shall be used by the
11 commission:

12 (i) Geographic proximity of the employer;

13 (ii) Size of the employer, which shall not be more than
14 twice or less than half, unless evidence establishes that there
15 are substantial differences which cause the work or conditions of
16 employment to be dissimilar; and

17 (iii) The employer's budget for operations and personnel.

18 (d) To determine comparability for employees of the Board
19 of Regents of the University of Nebraska or employees of the Board
20 of Trustees of the Nebraska State Colleges, the commission shall
21 utilize peer institutions with similar enrollments and similar
22 educational missions which may exclude land grant institutions or
23 institutions that have a medical center or hospital. Additionally,
24 the commission shall refer to peer institutions with similar
25 program offerings including the level of degrees offered.

26 (e) Any order or orders entered may be modified on the
27 commission's own motion or on application by any of the parties

1 affected, but only upon a showing of a new and material change in
2 the conditions from those prevailing at the time the original order
3 was entered.

4 (3) The rules of evidence shall not be followed. The
5 commission shall receive evidence relating to array selection,
6 job match, and wages and benefits which have been assembled by
7 telephone, electronic transmission, or mail delivery and any such
8 evidence shall be accompanied by an affidavit of authenticity from
9 the employer or any other person with personal knowledge providing
10 such evidence. The commission, with the consent of the parties to
11 the dispute and in the presence of the parties to the dispute, may
12 contact an individual employed by an employer under consideration
13 as an array member by telephone to inquire as to the nature
14 or value of a working condition, wage, or benefit provided by
15 that particular employer as long as the individual in question
16 has personal knowledge about the information being sought. The
17 commission may rely upon information gained in such inquiry for
18 its decision. Opinion testimony shall be received by the commission
19 based upon evidence provided in accordance with this subsection.
20 Testimony concerning job match shall be received if job match
21 inquiries were conducted by telephone, electronic transmission, or
22 mail delivery if the witness providing such testimony verifies the
23 method of such job match inquiry and analysis.

24 (4) The commission shall file its findings of fact and
25 conclusions of law with its order.

26 (5) Either party may, within thirty days after the date
27 such order is filed, appeal to the Supreme Court. The standard of

1 review for any appeal to the Supreme Court shall be as provided in
2 subsection (4) of section 48-825.

3 ~~(4)~~ (6) The commission, the Court of Appeals, or the
4 Supreme Court shall not enter an order for any period which is not
5 the same as or included within the budget period for which the
6 contract is being negotiated.

7 ~~(5)~~ (7) All items agreed upon during the course of
8 negotiations and not ~~subject to appeal~~ submitted as an unresolved
9 issue to the commission shall, when ratified by the parties,
10 take effect concurrent with the biennial budget period and shall
11 constitute the parties' contract. Upon final resolution of appeals
12 of all unresolved ~~items,~~ issues, the parties shall reduce the
13 orders of the commission, the Court of Appeals, or the Supreme
14 Court to writing and incorporate them into the contract without
15 ratification.

16 ~~(6)~~ The commission shall complete its deliberations and
17 issue appropriate orders by July 1 or as soon thereafter as is
18 practicable.

19 ~~(7)~~ The commission shall adopt expedited procedures to
20 assure timely completion of any appeal filed pursuant to the State
21 Employees Collective Bargaining Act.

22 Sec. 31. Section 81-1384, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 81-1384 ~~(1)~~ On March 16, the Chief Negotiator, any
25 appointed negotiator for the Board of Regents, any appointed
26 negotiator for the Board of Trustees of the Nebraska State
27 Colleges, and any appointed negotiator for other constitutional

1 offices shall report to the Legislature and the Governor on the
2 status of negotiations. The Governor may amend his or her budget
3 recommendations accordingly.

4 ~~(2) If the Chief Negotiator advises the Legislature that~~
5 ~~the state has appealed a Special Master's ruling, the Legislature~~
6 ~~may by a resolution approved by a three-fifths vote of its~~
7 ~~members by the conclusion of its regular session direct the Chief~~
8 ~~Negotiator to withdraw the pending appeal and accept the terms of~~
9 ~~the Special Master's ruling. This subsection shall not apply to any~~
10 ~~negotiators appointed by the Board of Regents, Board of Trustees of~~
11 ~~the Nebraska State Colleges, or other constitutional offices.~~

12 Sec. 32. Section 81-1385, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 81-1385 ~~(1) If the exclusive collective-bargaining agent~~
15 ~~appeals an adverse ruling from the Special Master on any or all~~
16 ~~issues, there shall be no change in the term or condition of~~
17 ~~employment in effect in that issue or issues during the pendency~~
18 ~~of the appeal. Orders adjusting the term or condition of employment~~
19 ~~in an issue or issues shall be effective beginning with final~~
20 ~~resolution of the appeal or January 1 of the first fiscal year of~~
21 ~~the contract period, whichever is earlier.~~

22 ~~(2) If the employer appeals an adverse ruling from the~~
23 ~~Special Master on any or all issues, there shall be no change in~~
24 ~~the term or condition of employment in effect in that issue or~~
25 ~~issues during the pendency of the appeal. Upon final resolution,~~
26 ~~the commission, Court of Appeals, or Supreme Court shall order~~
27 ~~increases or other changes in a term or condition of employment to~~

1 ~~be concurrent with the biennial budget. Interest shall be paid by~~
2 ~~the state on all withheld wages or insurance premium payments.~~

3 When an unresolved issue proceeds to the commission,
4 there shall be no change in the term or condition of employment
5 in effect in that issue or issues until the commission has ruled
6 and any subsequent appeal to the Supreme Court has been concluded.
7 Orders adjusting the term or condition of employment in an issue
8 or issues shall be effective beginning with final resolution of
9 the appeal. Upon final resolution, the commission or Supreme Court
10 shall order increases or other changes in a term or condition
11 of employment to be concurrent with the biennial budget. Interest
12 shall be paid, at the rate established by section 45-103 which is
13 in effect at the time of the final order, by the state on all
14 withheld wages or insurance premium payments.

15 Sec. 33. Section 81-1386, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 81-1386 (1) It shall be a prohibited practice for
18 any employer, employee, employee organization, or exclusive
19 collective-bargaining agent to refuse to negotiate in good faith
20 with respect to mandatory topics of bargaining.

21 (2) It shall be a prohibited practice for any employer or
22 the employer's negotiator to:

23 (a) Interfere with, restrain, or coerce state employees
24 in the exercise of rights granted by the State Employees Collective
25 Bargaining Act or the Industrial Relations Act;

26 (b) Dominate or interfere in the administration of any
27 employee organization;

1 (c) Encourage or discourage membership in any employee
2 organization, committee, or association by discrimination in
3 hiring, tenure, or other terms or conditions of employment;

4 (d) Discharge or discriminate against a state employee
5 because the employee has filed an affidavit, petition, or complaint
6 or given any information or testimony under the Industrial
7 Relations Act or the State Employees Collective Bargaining Act
8 or because the employee has formed, joined, or chosen to be
9 represented by any employee organization;

10 (e) Refuse to negotiate collectively with representatives
11 of exclusive collective-bargaining agents as required in the
12 Industrial Relations Act and the State Employees Collective
13 Bargaining Act;

14 (f) Deny the rights accompanying certification or
15 exclusive recognition granted in the Industrial Relations Act or
16 the State Employees Collective Bargaining Act; and

17 (g) Refuse to participate in good faith in any impasse
18 procedures for state employees as set forth in sections ~~81-1380~~
19 81-1381 to 81-1385.

20 (3) It shall be a prohibited practice for any employees,
21 employee organization, or bargaining unit or for any of their
22 representatives or exclusive collective-bargaining agents to:

23 (a) Interfere with, restrain, coerce, or harass any
24 state employee with respect to any of the employee's rights under
25 the Industrial Relations Act or the State Employees Collective
26 Bargaining Act;

27 (b) Interfere, restrain, or coerce an employer with

1 respect to rights granted in the Industrial Relations Act or
2 the State Employees Collective Bargaining Act or with respect
3 to selecting a representative for the purposes of negotiating
4 collectively on the adjustment of grievances;

5 (c) Refuse to bargain collectively with an employer as
6 required in the Industrial Relations Act or the State Employees
7 Collective Bargaining Act; and

8 (d) Refuse to participate in good faith in any impasse
9 procedures for state employees set forth in sections ~~81-1380~~
10 81-1381 to 81-1385.

11 (4) The expressing of any views, argument, or opinion,
12 or the dissemination thereof, whether in written, printed, graphic,
13 or visual form, shall not constitute or be evidence of any unfair
14 labor practice under any of the provisions of the Industrial
15 Relations Act or the State Employees Collective Bargaining Act if
16 such expression contains no threat of reprisal or force or promise
17 of benefit.

18 Sec. 34. Section 81-1387, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 81-1387 (1) Proceedings against a party alleging a
21 violation of section 81-1386 shall be commenced by filing a
22 complaint with the commission within one hundred eighty days of
23 the alleged violation thereby causing a copy of the complaint to
24 be served upon the accused party. The accused party shall have ten
25 days within which to file a written answer to the complaint. If the
26 commission determines that the complaint has no basis in fact, the
27 commission may dismiss the complaint. If the complaint has a basis

1 in fact, the commission shall set a time for hearing. The parties
2 shall be permitted to be represented by counsel, summon witnesses,
3 and request the commission to subpoena witnesses on the requester's
4 behalf.

5 (2) The commission shall file its findings of fact and
6 conclusions of law. If the commission finds that the party accused
7 has committed a prohibited practice, the commission, within thirty
8 days of its decision, shall order an appropriate remedy. Any party
9 may petition the district court for injunctive relief pursuant to
10 rules of civil procedure.

11 (3) Any party aggrieved by any decision or order of the
12 commission may, within thirty days from the date such decision or
13 order is filed, appeal therefrom to the ~~Court of Appeals~~ Supreme
14 Court.

15 (4) Any order or decision of the commission may be
16 modified, reversed, or set aside by the appellate court on one or
17 more of the following grounds and on no other:

18 (a) If the commission acts without or in excess of its
19 powers;

20 (b) If the order was procured by fraud or is contrary to
21 law;

22 (c) If the facts found by the commission do not support
23 the order; and

24 (d) If the order is not supported by a preponderance of
25 the competent evidence on the record considered as a whole.

26 Sec. 35. Sections 11, 12, 13, 17, 18, 36, and 38 of
27 this act become operative on July 1, 2012. Section 35 of this act

1 becomes operative on its effective date. The other sections of this
2 act become operative on October 1, 2011.

3 Sec. 36. Original sections 79-824 and 79-828, Reissue
4 Revised Statutes of Nebraska, are repealed.

5 Sec. 37. Original sections 48-801, 48-801.01, 48-802,
6 48-809, 48-811, 48-813, 48-815, 48-816, 48-817, 48-818, 48-824,
7 48-838, 79-852, 79-2116, 81-1369, 81-1371, 81-1372, 81-1373,
8 81-1375, 81-1378, 81-1379, 81-1381, 81-1382, 81-1383, 81-1384,
9 81-1385, 81-1386, and 81-1387, Reissue Revised Statutes of
10 Nebraska, are repealed.

11 Sec. 38. The following section is outright repealed:
12 Section 48-811.02, Reissue Revised Statutes of Nebraska.

13 Sec. 39. The following sections are outright repealed:
14 Sections 81-1374, 81-1380, 81-1389, and 81-1390, Reissue Revised
15 Statutes of Nebraska.

16 2. On page 1, strike beginning with "the" in line
17 1 through line 3 and insert "labor; to amend sections 48-801,
18 48-801.01, 48-802, 48-809, 48-811, 48-813, 48-815, 48-816, 48-817,
19 48-818, 48-824, 48-838, 79-824, 79-828, 79-852, 79-2116, 81-1369,
20 81-1371, 81-1372, 81-1373, 81-1375, 81-1378, 81-1379, 81-1381,
21 81-1382, 81-1383, 81-1384, 81-1385, 81-1386, and 81-1387, Reissue
22 Revised Statutes of Nebraska; to change and eliminate provisions
23 of the Industrial Relations Act and the State Employees Collective
24 Bargaining Act; to provide collective bargaining provisions
25 relating to school districts, educational service units, and
26 community colleges as prescribed; to provide for applicability; to
27 change provisions relating to probationary certificated employees;

1 to harmonize provisions; to provide operative dates; to repeal
2 the original sections; and to outright repeal sections 48-811.02,
3 81-1374, 81-1380, 81-1389, and 81-1390, Reissue Revised Statutes
4 of Nebraska.".